

**COMMISSION ON COMMON OWNERSHIP COMMUNITIES
MONTGOMERY COUNTY, MARYLAND
100 Maryland Avenue, Room 330
Rockville, Maryland 20850**

Cloverleaf Townhome Condominium Association,
Complainant

v.

Case **#68-10**

August 1 , 2011

Ashish and Shefalia Patel,
Whelan)
Respondents

(Panel: Alkon, Molloy,

JUDGMENT BY DEFAULT

This matter comes before the Commission on Common Ownership Communities (Commission) pursuant to Sections 10B-8, 9, and 13 of the Montgomery County Code (2010), COMCOR 10B.06.01.03(b), and the Commission's *Default Judgment Procedures*. The hearing panel has reviewed the record in this case, and now makes the following findings of fact, conclusions of law, and orders.

Findings of Fact

1. The Complainant, Cloverleaf Townhome Condominium Association (Cloverleaf), is a condominium association operating under the Maryland Condominium Act pursuant to covenants filed in the land records of Montgomery County, Maryland.

2. The Respondents, Ashish and Shefalia Patel (Patels), are the co-owners of a unit located at 20934 Mountain Lake Terrace, Germantown, Maryland. This unit is part of the Cloverleaf development and is subject to its governing documents.

3. On July 19, 2010, Cloverleaf filed this complaint against the Patels with the Commission on Common Ownership Communities. The complaint alleged that the Patels had without first requesting, and receiving, authorization from Cloverleaf, constructed a room under the deck at the rear of their home; installed a basketball hoop and pole in their front yard; and installed a shed in the rear yard of the unit. Cloverleaf alleged that these actions are violations of its

governing documents, and requested that the Commission order the Patels to remove the three structures.

4. The complaint further alleged, and documented, that Cloverleaf had notified the Patels of the alleged violations beginning in 2008, and that on May 3, 2010, it had informed the Patels of their right to a hearing with Cloverleaf's board of directors on the matter. The Patels did not attend that hearing, which was held on June 10, 2010. On June 16, 2010, Cloverleaf sent written notice to the Patels of the decision of the board of directors. In that notice, Cloverleaf informed the Patels that "the hearing was held due to the fact that violations noted on your property (basketball hoop in front yard which is prohibited by the Covenants; trashcan in the front yard; structure (room) installed under deck without receiving approval) had not been corrected" and that a penalty of \$450 had been added to the Patels' account.

5. Although the "Summer, 2009 Annual Community Maintenance Inspection" form lists the 3 violations referred to above and also lists a "shed built without approval" as violations, the shed is not mentioned in any of the violation notices, nor is it mentioned as a violation in the May 3 and June 16, 2010, notices.

6. On July 19, 2010, Cloverleaf filed this dispute with the Commission. The Complaint alleges that the Patels violated the community rules by installing a basketball hoop, a structure under the deck, and a shed.

7. On July 20, 2010, the Commission's staff mailed a copy of the complaint, with a cover letter and other information, to the Patels and instructed them to answer the complaint within 30 days. The cover letter advised the Patels that if they did not answer the complaint, the Commission could enter a default judgment against them.

8. The Patels did not answer the complaint within 30 days or at any other time.

9. On September 29, 2010, after the expiration of the 30-day response time, the Commission's staff wrote to Cloverleaf to advise it that the Patels had not answered the complaint and that Cloverleaf could move for entry of an order of default against the Patels pursuant to the Commission's *Default Judgment Procedures*. The staff sent a copy of this letter, and a copy of the *Procedures*, to the Patels at the same time.

10. On October 22, 2010, Cloverleaf filed a request for entry of an order of default, and sent a copy of its request to the Patels. On the same day, the staff sent notices to both Cloverleaf and to the Patels informing them that the request for entry of an order of default would be considered by the Commission on

November 3, 2010, and advising them of the staff's recommendation that the Commission accept jurisdiction of the complaint and issue the order of default.

11. The Commission voted to take jurisdiction of the complaint and to issue the order of default on November 3, 2010; the staff mailed the order to the Patels on November 4, 2010, by certified U.S. Mail. The Patels signed a receipt for the certified mail, which was received by the staff on November 9, 2010.

12. In its request for default judgment, Cloverleaf states that the Patels have not removed the structures.

13. Article X, Section 3, of Cloverleaf's Bylaws state:

No structural alteration, construction, addition or removal of any condominium unit or common elements shall be commenced or conducted except in strict accordance with the provisions of these Bylaws, or Title 11 of the Real Property

Article of the Annotated Code of Maryland.

14. Article XI, Section 1, of Cloverleaf's Bylaws states, in pertinent part:

[I]t shall be prohibited to install, erect, attach, apply, paste, hinge, screw, nail, build, alter, remove or construct any . . . walls, or to make any change to or otherwise alter . . . in any manner whatsoever any condominium unit or any of the common elements within the project. . . without the written consent of the Board of Directors or by an Architectural Control Committee designated by the Board of Directors.

Conclusions of Law

1. The Commission has jurisdiction of this dispute under Section 10B-8 of the Montgomery County Code.

2. The Commission has jurisdiction over the parties to this dispute under Section 10B-8 of the Montgomery County Code and COMCOR 10B.06.01.03(b)(2).

3. Cloverleaf's Bylaws prohibit the construction of play equipment, sheds, and rooms without Cloverleaf's prior approval.

4. The Patels have constructed play equipment and a room, in violation of Cloverleaf's Bylaws.

5. The standard of review that we must apply when we evaluate the decision of a board of directors was defined in *Kirkley v. Seipelt*, 212 Md. 127 (1956). There, the Court of Appeals wrote that "[w]e hold that any refusal to approve the external design or location. . . would have to be based upon a reason that bears some relation to the other buildings or the general plan of development; and this refusal would have to be a reasonable determination made in good faith, and not high-handed, whimsical or captious in manner." 212 Md. at 133.

6. The duty to provide evidence of bad faith or arbitrary behavior is on the Respondents, who have not provided any evidence at all. We find, furthermore, that the structures erected by the Respondents were not only done without the required approval, but can be expected to be visually obvious and to affect the appearance of the community. The regulation of the appearance and architectural harmony of the community is, under *Kirkley v. Seipelt*, within the reasonable discretion of the Complainant's board. We find that the board acted pursuant to its governing documents and that it had a reasonable basis for its decision concerning the basketball hoop and the structure under the deck.

7. However, with respect to the shed, we also find that Cloverleaf failed to comply with its governing documents and with Section 10B-9(b) of the Montgomery County Code, which states:

A party must not file a dispute with the Commission until the party makes a good faith attempt to exhaust all procedures or remedies provided in the association documents.

As the Commission has elaborated in its *Statement of Policy Concerning the Exhaustion of Remedies as a Precondition to Filing a Dispute with the Commission*:

At the minimum, the Commission expects every association to have done the

following: 1) provided the other party written notice of the alleged violation(s) together with a reference to the section(s) of the association documents involved;

2) provided the party a reasonable time either to correct the alleged violation(s) or to request a hearing with the association's governing body; 3) provided the

party a hearing with the governing body if requested; 4) provided the party a

written notice of the governing body's decision after a hearing.....

We find that with respect to the shed as an alleged violation, Cloverleaf failed to provide notice and the right to a hearing. Therefore, we dismiss this part of the complaint without prejudice. Cloverleaf may pursue this alleged violation with the Commission in a separate complaint provided that it first follow its own rules and Section 10B-9. 1/

ORDER

1. The Patels must remove the basketball hoop (and pole, if any) and the room under their deck, and restore the landscaping of the lot to its original condition, no later than September 10, 2011.

2. The Patels must pay Cloverleaf the sum of \$50.00 as its costs in this matter no later than September 10, 2011.

3. If the Patels do not remove the structures as ordered, Cloverleaf is authorized to enter the property, with or without the Patels' permission, and to dismantle and remove the structures at the Patels' cost. Cloverleaf may add this cost to the amount owed by the Patels as assessments, and may collect them in the same manner as it collects assessments, if so authorized by its governing documents and rules.

Any party aggrieved by this Order may appeal it to the Circuit Court of Montgomery County within 30 days after the date of this order pursuant to the rules of court governing appeals from the decisions of administrative agencies.

Commissioners Molloy and Whelan concurred in this decision.

Mitchell Alkon, Panel Chair

COMMISSION ON COMMON OWNERSHIP COMMUNITIES
FOR MONTGOMERY COUNTY, MARYLAND

By: _____
Mitchell Alkon, Panel Chair

cc: Steve Leskowitz, Manager

1/ While the hearing panel was reviewing the record, the panel noticed that the Complaint was signed by the property manager and not by a duly-authorized officer of the Association. Associations may represent themselves before the Commission without the need for an attorney, *see*, Section 10-206(b)(6), Business and Professions Article, Code of Maryland, but that privilege only applies to directors and officers of the association, not to their property managers. *See also, Policy Statement on Exhaustion of Remedies, supra*, Par. 1: "5) The complaint is signed by the president or vice-president of the board of directors." The panel therefore suspended the dispute and ordered Cloverleaf to file a properly-signed complaint as well as additional evidence that the panel concluded was necessary to document certain allegations. Upon Cloverleaf's compliance, the panel determined to proceed to a final order.